CLASSIFICATION OF THE PUBLIC LANDS

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Each citizen of the United States owns an equal undivided share in the public domain. This has included all the land in the Continental United States and Alaska except the original thirteen colonies and the present states of Texas, Kentucky and Tennessee. The original public domain of the United States proper was 1,441,436,160 acres, of Alaska 368,103,680, and thus would have totaled 1,809,539,840 acres if none of the land had been disposed of. Under the constitutional provision that "Congress shall have power to dispose of and make all needful regulations respecting the territory or other property belonging to the United States," Congress has from time to time enacted, modified and repealed laws for the disposal of the public land, and the total area, exclusive of Alaska, has been reduced to approximately 380,000,000 acres.

The large membership of Congress, the conflicting desires of various portions of the country and of great private interests, and the fact that a minority can prevent the passage of laws desired by the majority, have caused mismanagement of the public domain. In the early days, the pressure of what then seemed a great national debt led to the disposal of the land for revenue. This continued until the homestead law was enacted as a recognition that the establishment of homes and home improvements is a greater return to the Nation than a few dollars per acre. Since that time all the non-mineral public lands have been open to settlement by citizens of the United States who are willing to make farm homes. The immense area of the public land, however, made it practically impossible to determine whether any particular tract was or was not mineral.

Congress provided for the sale of our splendid timber land at a uniform price of $2.50 per acre, evidently on the theory that it was necessary to place a bonus upon the institution of lumber operations. This forest land is now worth from ten to one hundred times the purchase price of $2.50 per acre. Some of it has been

saved to the people by the law providing for national forests; but before the possibilities and wisdom of their rapid creation was understood by the executive branch of the Government the bulk of the best timber land had passed into private holding. In this great estate of the people there were about 150,000,000 acres of land underlaid with valuable coal, and not legally open to homesteaders, but the Land Department, because of lack of funds, was unable to save fully 100,000,000 acres of the best of this coal.

From the above it is evident that the one great business need of the Government as steward of the peoples' landed estate, was such a classification of the land and resources as would have made it possible to devote the various areas to their best uses. The location and quality of at least the coal and other minerals which occur in great beds, could have been readily determined. The areas more valuable for permanent reservation for the use of all the people as national forests and national parks could have been found before the best part of them were gone. Invaluable reservoir and water-power sites could have been determined and held for use under proper regulation. The remaining area would have been left for the homemaker. Such a classification would have brought to the attention of Congress in an irresistible way, and before selfish prejudices against the proper disposal of the land had become acute, the propriety of dividing land not only by vertical planes as is now the custom, but by horizontal planes in cases where fine agricultural surface is underlaid with valuable mineral.

In 1796 Congress, in providing for the survey of the public lands, required (1 Stat. 466) the surveyors to note in their returns "the true situation of all mines, salt licks, salt springs and mill sites coming to their knowledge, and water courses over which lines of survey should pass," and also the quality of the lands. The same law required that these returns should be submitted to the surveyor-general, who was required to "cause a description of the whole lands surveyed to be made out and transmitted to the officers who may superintend the sales." This provision is carried into section 2395 of the Revised Statutes and has been in force for more than a century. It is a sad fact, however, that the returns of surveyors are for the most part worse than none at all, since they are woefully inaccurate and misleading.

The surveyors-general's offices throughout the public land states

naturally came to be a source of political patronage, and the surveyors-general and their deputies were not appointed for reasons of efficiency. For that reason Congress was seriously considering in 1876 the abolition of these offices, and Professor F. V. Hayden, in a hearing before the House Committee on Public Lands, stated:

"If the deputy surveyors could be required to bring in on their plats the information that is demanded, there would be no necessity at present for a bureau for information as regards the classification and irrigation of lands." (Forty-fifth Congress, second session, House Mis. Doc. 55, p. 19.)

The need for classification so worked upon the minds of Congress that in the Sundry Civil Bill of June 20, 1878, a clause was inserted that:

"The National Academy of Sciences . . . at their next meeting take into consideration the methods and expenses of conducting all surveys of a scientific character under the War and Interior Departments and the surveys of the land office, and report to Congress as soon thereafter as may be practicable a plan for surveying and mapping the territories of the United States on such general system as will, in their judgment, secure the best results at the least possible cost."

In the proceedings of the committee appointed by the Academy, Major J. W. Powell said:

"In the administration of the laws relating to these (public) lands those belonging to each specific class must be determined; *but no adequate provision is made for securing an accurate classification, and to a large extent the laws are inoperative, or practically void;* for example, coal lands should be sold at ten or twenty dollars per acre, but the Department having no means of determining what lands belong to this class, titles to coal lands are usually obtained under the provision of statutes that relate to lands of other classes; that is, by purchasing at $1.25 per acre, or by homestead or pre-emption entry. An examination of the laws will exhibit this fact, that for the classification contemplated therein a thorough survey is necessary, embracing the geological and physical characteristics of the entire public domain. The only provision under the general land office for such a survey is contained in the 'instructions to the surveyor-general.' (*Vide,* p. 18, and paragraphs under the head of 'Summary of objects and data to be noted.') In the performance of those duties the deputy surveyors, who do the work under contract, fail entirely to provide the facts necessary to the proper administration of the laws, and, in practice, the facts upon which transactions in the department are based are obtained not from experts employed as government officers and competent

to perform the task, but on affidavit made by the parties interested, or by persons selected by them, and the history of the land office abundantly exhibits the fact that states and individuals have to a large extent obtained titles to lands from the government under fraudulent representations.

"From the above statement it will be apparent that a thorough survey of the geology and physical classification of the entire domain *is necessary to the administration of the laws relating thereto.*" (Forty-fifth Congress, third session, H. Mis. Doc. No. 5, pp. 19, 20, 21.)

The National Academy Committee after recommending that surveys should be made by the Coast Survey, which was well fitted to make and complete them, went on to say:

"The best interests of the public domain require, for the purposes of intelligent administration, a thorough knowledge of its geological structure, natural resources and products. The domain embraces a vast mineral wealth in its soils, metals, salines, stones, clays, etc. *To meet the requirements of existing laws in the disposition of the agricultural, mineral, pastoral, timber, desert and swamp lands, a thorough investigation and classification of the acreage of the public domain is imperatively demanded.* The committee, therefore, recommend that Congress establish, under the Department of the Interior, an independent organization, to be known as the United States Geological Survey, to be charged with the study of the geological structure and economical resources of the public domain, such survey to be placed under a director, who shall be appointed by the President, and who shall report directly to the Secretary of the Interior."

The House passed a bill February 25, 1879, in which all the recommendations of the Academy were accepted, but the Senate committee reported the bill on February 28th, with all these provisions stricken out. Evidently foreseeing the defeat of these unusually wise measures Mr. Atkins, Chairman of the House Committee on Appropriations, inserted in the Sundry Civil Bill an item of $100,000 "for the expenses of the geological survey and *the classification of the public lands, etc.*"

Thus, at a time when classification would have been of untold value, we see an awakened consciousness in Congress that their trusteeship of the public domain demanded an investigation and classification of its nature. Unfortunately the wise impulse led to practically nothing. The provision that the Geological Survey should classify has been almost nullified by lack of necessary appropriations. Besides this lack of means to classify there followed a period of quiescence both in Congress and in the executive branch of the

Government concerning the need for properly administering the public land. During that period, which extended to President Roosevelt's first term, seventy-five per cent. of the valuable part of our land passed into private possession either in accordance with the law or, not infrequently, contrary to the law.

The last administration sought vigorously to do all that could be done with the insufficient and inefficient laws at its disposal. During Mr. Roosevelt's presidency the area of the national forests was trebled, thus classifying the public land valuable for timber and watershed protection purposes. President Roosevelt withdrew about 68,000,000 acres of the coal land to hold it from disposal until it might be classified. The bulk of this land has been classified and the classification of the rest will be practically complete at the end of the coming field season. The Reclamation Service has withdrawn large areas for its projects under the Reclamation Act thus classifying the bulk of the irrigable land remaining. President Roosevelt also withdrew a great area of phosphate and oil lands. One of the last acts of Secretary Garfield, acting for the President, was to withdraw several hundred reservoir and water-power sites from all form of disposition except under the appropriate right of way laws. All these withdrawals, however, are simply acts of the executive to protect temporarily the public property and it is the part of Congress to pass the badly needed laws to devote permanently the public lands and resources to their best use.

The conclusion to be drawn from the conditions set forth above is that either the remaining public land must be disposed of to the disadvantage and irreparable loss of its owners, the people, or Congress must be speedily aroused to the great fundamental principles: That the surface of land more necessary for public use for conserving water run-off, unusual natural scenic beauties or wonders, timber and forage, than for homemaking, should be held by the Government permanently for the use of all the people and maintained effectively in a condition to insure its highest efficiency for all time; that the surface of land chiefly valuable for agriculture should be disposed of only to actual homemakers in areas reasonably capable of supporting families; that the right to exploit the mineral resources belonging to the nation should be reserved and granted only to those who actually intend to exploit them, in such limited areas, for such periods, and under such conditions as will for each class of mineral

bring about its seasonable and economical exploitation, but prevent such monopoly as may injure the interests of the people; that rights of way which depend upon the peculiar formation of any of the public lands should be permitted for definite and limited periods only, varying for each class of right of way, with reasonable conditions to protect the public interest, but with certainty to the permittees against revocation during the permit period for any cause except non-use or misuse; and that, pending disposal or reservation of the public land, it should be administered and protected as far as each class of land is concerned by that governmental agency best fitted in each case to handle it efficiently.